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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,606

05/19/2005

Jakke Makela

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4955 7590 02/07/2008

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EXAMINER

AGUSTIN, PETER VINCENT

ART UNIT

PAPER NUMBER

2627

MAIL DATE

DELIVERY MODE

02/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/535,606

Applicant(s)

MAKELA ET AL.

Examiner

P. Agustin

Art Unit

2627

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 2, 6, 10-22, 32 and 35-46.
Claim(s) rejected: 1, 3-5, 7-9, 23-31, 33, 34 and 47-50.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Thang V. Tran/
Primary Examiner

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed January 25, 2008 have been fully considered but are not persuasive.

(a) The applicant argues on pages 12-13 that Komurasaki does not teach a "first light beam transversal directly to data tracks of the optical storage medium" (emphasis on the description of the term "transversal" in applicant's disclosure), and that the light beam 18 in Figure 1 of Komurasaki is perpendicular to the data tracks, not transversal. While the examiner agrees that light beam 18 is perpendicular to the data tracks, it should be noted that the examiner relied on the light beam 40, not 18, as the claimed "first light beam" that is guided "transversal" to the data tracks. As shown in Figure 1, the light beam 40 (represented by broken lines) is guided in a "transversal" manner, as compared to light beam 18 (represented by solid lines), which is guided perpendicular to the data tracks. The applicant is also directed to Figure 2, which more clearly shows these two light beams, one being perpendicular and the other NOT perpendicular, i.e., consistent with the applicant's description of the term "transversal". Therefore, the rejection is maintained.

(b) In response to applicant's arguments on page 14, paragraph 2 regarding the added weight and size of an access unit resulting from the combination of references, it should be noted that these arguments are not directed to the claimed language. Furthermore, the test for obviousness of combining references is not whether the features of a secondary reference (Komurasaki) may or may not be bodily incorporated into the primary reference (Berg), rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art. As noted in the rejection, one of ordinary skill at the time of invention would have realized that applying the teachings of Komurasaki to the device of Berg would enable one to maintain recorded characteristics at good quality and to correctly reproduce a previously recorded signal. Therefore, the rejection is maintained.